

San Francisco Bay Conservation and Development Commission

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November 10, 2016

TO: Commissioners and Alternates

FROM: Lawrence J. Goldzband, Executive Director (415/352-3653; larry.goldzband@bcdc.ca.gov)
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SUBJECT: Staff Recommendation on BCDC Permit Application No. 2016.001.00 for San Francisco Ferry Terminal Expansion Project (South Basin)
(For Commission consideration on November 17, 2016)

Recommendation Summary

The staff recommends that the Commission approve the San Francisco Bay Area Water Emergency Transportation Authority's and Port of San Francisco's BCDC Permit Application No. 2016.001.00, which, as conditioned, will result in various activities including:

1. The removal of 21,000 square feet of pile-supported fill (786 cubic yards of solid fill) in the form of Pier 2 (formerly Sinbad's Restaurant pier), as required in the San Francisco Waterfront Special Area Plan and BCDC Permit No. 2012.001.06;
2. The construction of ferry terminal Gates F and G (and relocation of Gate E) and associated vessel boarding and docking facilities, resulting in approximately 14,280 square feet of pile-supported, cantilevered, and floating fill (approximately 80 cubic yards of solid fill);
3. The improvement and expansion of a dual-purpose ferry passenger waiting, circulation, and public access area at and adjacent to the Southern Promenade (renamed "East Bayside Promenade"), including the creation of a 15,950-square-foot Embarcadero Plaza involving fill over an existing 10,000-square-foot open water area, resulting in 28,150 square feet of new net fill, and a 36,000-square-foot area for general public access;
4. The removal of 28,150 square feet of fill at the Terminal Four Wharf and Warehouse Project in the City of Richmond, Contra Costa County; and

5. Approximately 20,500 cubic yards of initial (new) dredging to improve vessel access, and periodic maintenance dredging, of up to 10,000 cubic yards per episode every three to four years until dredging authorization expiration in 2021, with disposal of the new material at the San Francisco Deep Ocean Disposal Site (SF-DODS) or at the previously-permitted Montezuma Wetlands restoration site in the Suisun Marsh, Solano County, and disposal of the maintenance material at a federally-authorized in-Bay site, SF-DODS, or a beneficial reuse site.

Staff Recommendation

The staff recommends that the Commission adopt the following resolution:

I. Authorization

- A. Within the Commission's Bay jurisdiction, subject to the conditions below, the permittees, the San Francisco Bay Area Water Emergency Transportation Authority (WETA), and the Port of San Francisco (Port), are authorized to do the following within the South Basin of the San Francisco Ferry Terminal, in the City and County of San Francisco:
 1. **Pier 2 Removal.** Remove approximately 21,000 square feet (0.48 acres) of a pile-supported deck and 786 cubic yards of solid fill at Pier 2, including 350, 12-to 18-inch-diameter piles, and four 36-inch-diameter piles.
 2. **Gate E Relocation.** Relocate, use, and maintain in-kind Gate E at a location approximately 43 feet east of its existing location to align with Gates F and G, by moving a total of eight 36-inch-diameter, 145- to 155-foot-long steel piles, and replacing a 1,260-square-foot gangway with a 1,470-square-foot gangway, which complies with the federal Americans with Disabilities Act (ADA) standards, resulting in a 210-square-foot (0.005 acre) net increase of cantilevered fill.
 3. **Gates F & G Installation.** Install, use, and maintain in-kind passenger loading and vessel berthing facilities at Gates F and G, resulting in approximately 14,280 square feet (0.38 acres) of pile-supported, cantilevered, and floating fill, and approximately 80 cubic yards of solid fill, specifically:
 - a. Two 5,670-square-foot floats (11,340 square feet total);
 - b. Two 1,470-square-foot gangways (2,940 square feet total);
 - c. Twenty-four 36-inch-diameter, 140- to 150- foot-long steel piles;
 - d. Thirty-eight 14-inch-diameter, 64-foot-long fender piles and associated 12-inch-wide wood fender blocks; and
 - e. Two 16- to 25-foot-high, 3,120-square-foot canopies (6,240 square feet total) located on the above-cited floats and gangways.

4. **East Bayside Promenade, Passenger Circulation, Waiting and Boarding Areas, and Embarcadero Plaza.** Within an approximately 36,000-square-foot area, inclusive of a 5,200-square-foot (0.12 acre) public access area required per BCDC Permit No. 1997.007.09, undertake the following activities:
- a. Place 10,000 square feet of pile-supported fill at an open water lagoon to create the Embarcadero Plaza;
 - b. Install, use, and maintain in-kind 155 24-inch-diameter, and thirteen 36-inch-diameter, 135- to 155-foot-long steel piles to support the Embarcadero Plaza, East Bayside Promenade, and access gates, totaling 479 cubic yards of solid fill;
 - c. Construct, use, and maintain in-kind approximately 695 linear feet of amphitheater seating at the Embarcadero Plaza, three to four feet above the existing grade of Herb Caen Way;
 - d. Install, use, and maintain in-kind a 350-foot-long, 42-inch-high guardrail between the Embarcadero Plaza and the adjacent East Bayside Promenade, and the adjacent Agriculture Building;
 - e. Install, use, and maintain in-kind a 684-foot-long, 42-inch-high guardrail with stainless steel horizontal bars and vertical supports spaced at approximately five feet on center at the eastern and southern shoreline edges of the East Bayside Promenade;
 - f. Construct, use, and maintain in-kind a 684-foot-long, one-foot-high curb along the eastern and southern shoreline edges of the East Bayside Promenade;
 - g. Construct, use, and maintain in-kind two 17-foot-wide, 19.5-foot-high portals at Gates F and G with a stainless canopy roof and doors;
 - h. Construct, use, and maintain in-kind two 13.5-foot-high, 2,500-square-foot canopies (totaling 5,000 square feet) on the East Bayside Promenade, with fritted glass embedded with photovoltaic cells, lighting, and passenger signage, located between Gates E and F, and Gates F and G;
 - i. Construct a 1,470-square-foot cantilever walkway located south of the Agriculture Building, connecting the East Bayside Promenade and Herb Caen Way;
 - j. Install a bioretention planter at the northeast edge of the Embarcadero Plaza; and
 - k. Install, use, and maintain in-kind forty six-foot-long benches at the East Bayside Promenade, three sets of solar-powered waste and recycling stations, including three columnar pedestal ashtrays, and three 22-foot-high surface mounted lighting structures.

5. **Dredging.** Within an approximately 2.42 acre area at the approach and berthing areas located adjacent to Gates F and G (Exhibit B):
 - a. Conduct up to 20,500 cubic yards of new work dredging to a depth of minus 12.5 feet Mean Lower Low Water (MLLW), with two feet of over-dredge depth allowance, and dispose the material at the federal ocean disposal site (SF-DODS) located outside of the Commission's jurisdiction or as foundation material at the BCDC-authorized Montezuma Wetlands Restoration site; and
 - b. Until the year 2021, following the completion of above-cited initial (new) dredging, conduct maintenance dredging of up to 10,000 cubic yards of sediment per episode every three to four years, to a depth of minus 12.5 feet MLLW with two feet of over-dredge depth allowance, and dispose the sediment at an authorized beneficial reuse site, an approved in-Bay disposal site, or SF-DODS.
 6. **Extended Barge Mooring.** Moor two approximately 7,800-square-foot (totaling 15,600 square feet) construction-related barges for up to 24 months.
 7. **Temporary Facilities.** Temporarily place and subsequently remove a minor amount of fill, such as cantilevered gangways and similar access facilities, to provide emergency access to the evacuation area (i.e., Embarcadero Plaza and East Bayside Promenade) following a significant seismic event, which results in a potential failure of The Embarcadero seawall and a consequent disconnection of the subject water transit facility from the upland area.
- B. **Application Date.** This authority is generally pursuant to and limited by the application dated January 20, 2016, including all subsequently accompanying exhibits, correspondence, and all conditions contained herein.
- C. **Deadlines for Commencing and Completing Authorized Work.** Work authorized herein must commence prior to June 1, 2018 or this permit will lapse and become null and void. Such work must also be diligently pursued to completion and must be completed within three years of commencement or by June 1, 2021, whichever is earlier, unless an extension of time is granted by amendment of the permit. The in-kind maintenance activities at ferry terminal facilities and public access areas (not including maintenance dredging) authorized herein are allowed as long as activities and uses authorized herein remain in place for their authorized use and as long as all relevant regulatory approvals and leases remain valid and applicable. Authorization of maintenance dredging is allowed until the year 2021 only following the completion of the initial new dredging authorized herein.
- D. **Total Fill.** The ferry terminal project will result in 28,150 square feet of pile-supported, cantilevered, and floating fill, and a 227-cubic-yard net decrease of solid fill (Table 1). To offset the net increase of Bay fill, a total of 28,150 square feet of pile supported and cantilevered fill will be removed at the Terminal Four Wharf and Warehouse site in the City of Richmond, Contra Costa County.

Table 1

Fill	Area (sf)	Area (acres)	Volume (cy)
Removal	-21,000	-0.48	-786
Gate E	210	0.005	0
Gates F and G	14,280	0.33	80
Passenger and Public Access Area	34,660	0.80	479
New Fill	49,150	1.14	559
Net Change	28,150	0.66	-227
Mitigation	28,150	0.66	0
Total Fill	0	0	-227

II. Special Conditions

The authorization made herein shall be subject to the following Special Conditions (and Standard Conditions, Part IV):

- A. **Construction Plans.** The improvements authorized herein shall be built generally in conformance with the plans entitled “Downtown San Francisco Ferry Terminal Expansion Project South Basin Improvements,” prepared by URS Corporation/AECOM, and dated September, 2016. No noticeable changes or revisions shall be made to these plans or work authorized herein without prior review and written approval by the staff on behalf of the Commission.
- B. **Plan Review.** No work whatsoever shall be commenced pursuant to this conditioned authorization until final plans, including site, demolition, engineering, architectural, and public access plans, and any other relevant criteria and specifications, are submitted to, reviewed, and approved in writing by or on behalf of the Commission. To save time, preliminary drawings can be submitted and reviewed by the Commission staff prior to the submittal of final plans.
 1. **Plan Type.** Grading, demolition, architectural, engineering, public access, and other relevant plans shall include and clearly label the Commission’s Bay jurisdiction (Mean High Water Line) and the line located 100 feet inland, all property lines, the boundaries of all areas reserved for public access, details showing the location, types, dimensions, and materials to be used for all facilities authorized herein.
 2. **Engineering Plans.** Engineering plans shall include a complete set of contract drawings, specifications, and design criteria. The design criteria shall be appropriate to the nature of the project, the use of any structures, soil and foundation conditions at the site, and potential earthquake-induced forces. Final plans shall be signed by the

professionals of record and be accompanied by evidence that the design complies with all applicable codes, and that a thorough and independent review of the design details, calculations, and construction drawings have been made.

3. **Preliminary and Final Plans.** All plans submitted to the Commission staff shall be accompanied by a letter requesting plan approval, identifying the type of plans submitted and whether plans are final or preliminary, and the portion of project authorized herein. Plan review shall be completed by or on behalf of the Commission within 45 days of receipt of plans. Approval or disapproval shall be based upon:
 - a. Completeness and accuracy of the plans in showing all necessary elements, including the Commission's jurisdictional lines, property lines, accurate quantities and dimensions of Bay fill, and any other criteria required by this authorization;
 - b. Consistency of the plans with the terms and conditions of this authorization;
 - c. The inclusion of public access required herein;
 - d. Consistency of the plans with the advise of the Commission's advisory boards;
 - e. Assurance that provisions have been incorporated for safety in case of a seismic event; and
 - f. Assurance that appropriate elevations are incorporated to prevent overtopping, flooding, and 100-year storm events at all public areas required herein.
4. **Final Approved Plans.** All improvements and uses shall conform to final approved plans. Prior to any use of the facilities authorized herein, the appropriate design professional(s) of record shall certify in writing that, through personal knowledge, the work covered by the authorization has been performed in accordance with the approved design criteria and in substantial conformance with the approved plans. No noticeable changes shall be made thereafter to any final plans or to any structure without first obtaining written approval of the change(s) by or on behalf of the Commission.
5. **Discrepancies between Approved Plans and Special Conditions.** In case of any discrepancy between final approved plans and Special Conditions of this authorization or legal instruments approved pursuant to this authorization, the Special Conditions shall prevail. The permittees are responsible for assuring that all plans accurately and fully reflect the Special Conditions of this authorization.
6. **Appeals of Plan Review Decisions.** Any plan approval, conditional plan approval, or plan denial may be appealed by the permittee or any other interested party to the appropriate Commission advisory board (Design Review Board or Engineering Criteria Review Board), and, if necessary, subsequently to the Commission. Such appeals must be submitted to the Executive Director within 30 days of the plan review action and must include specific reasons for the appeal. The appropriate review board shall hold a public meeting and provide advice within 60 days of the

receipt of the appeal. If subsequently appealed to the Commission, the Commission shall hold a public hearing and act on the appeal within 90 days of the receipt of the subsequent appeal.

7. **Potential Project Revisions and Commission Advisory Board Review.** The facilities authorized herein shall be designed and constructed to meet Essential Facility standards to provide access for emergency responders and evacuees in the event of a major catastrophe. The Embarcadero Plaza and East Bayside Promenade shall meet the highest risk-category design (Risk Category IV facilities) under the standards of the American Society of Civil Engineers Section 7-10 requirements per California Building Code 2013, and must comply with the structural and seismic requirements of an essential facility.¹ If the permittees propose to substantially change or alter the project design, as authorized herein, an amendment to this authorization will be necessary and subject to additional ECRB review and advice to ensure Essential Facility and other relevant standards are met.
- C. **Project Layout.** Prior to constructing structures authorized herein, the permittees shall request in writing an inspection by the Commission staff of the layout as it has been surveyed and staked in the field relative to MHW. Within five working days of receipt of the written request for an inspection, the Commission staff will inspect the layout as it has been surveyed and staked, and subsequently confirm in writing that the layout is consistent with the terms and conditions of the permit. If the staff is unable to perform the inspection, the permittees may commence such work, but the staff's inability to conduct an inspection does not relieve the permittees of the responsibility to provide public access areas and build any structures in accord with the approved plans.
- D. **Emergency Access.** If a significant seismic event occurs, which results in the collapse or serious disrepair or disuse of The Embarcadero seawall and the consequent disconnection of the ferry terminal facilities (authorized herein) from the land, the permittees shall immediately conduct a rapid assessment of damage and arrange for construction of temporary access between the landside and terminal areas. The permittees shall notify the Commission on the location, size, purpose, and approximate duration of temporary access facilities prior to installation and any necessary maintenance of said facilities. Within 60 days of temporary facility(ies) installation, the permittees shall submit an amendment request to this authorization seeking further Commission consideration and authorization of a full and complete project proposal. Following installation, access facilities shall not be substantially enlarged, repurposed or become in any manner permanent without prior review and approval by or on behalf of the Commission.

¹ The design performance of essential facilities are buildings and structures intended for immediate occupancy and life safety that are to remain operational during an emergency including extreme environmental events such as floods, hurricanes and earthquakes.

- E. **Abandonment.** If, at any time, the Commission determines that the improvements in the Bay authorized herein have been abandoned for a period of one year or more, or have deteriorated to the point that public health, safety or welfare is adversely affected, the Commission may require that the improvements be removed by the permittees or successors in interest within one year or other reasonable period of time as determined by the Commission.
- F. **Best Management Practices**
 - 1. **Debris Removal.** All construction debris shall be removed from the project site. In the event that any such material is placed in the Commission's jurisdiction, the permittees, its assigns, or successors in interest, or the owner of the improvements, shall remove such material, at their expense, within ten days after notification by or on behalf of the Commission.
 - 2. **Construction Operations.** All construction operations shall be performed to prevent construction materials from falling, washing or blowing into the Bay. In the event that such material escapes or is placed in an area subject to tidal action of the Bay, the permittees shall immediately retrieve and remove such material at their expense.
- G. **Fill Removal and Disposal.** All pilings and structures designated for removal shall be either fully removed or cut to minus two (2) feet below the mudline.
- H. **In-Kind Repairs and Maintenance.** Any in-kind structural or facility repair and maintenance work authorized herein shall not result in an enlargement of the authorized structural footprint and shall only involve construction materials approved for use in San Francisco Bay.
- I. **Dredging.** Both new and maintenance dredging activities are subject to the following conditions:
 - 1. **Water Quality Approval.** At least 45 days prior to the commencement of any dredging episode authorized herein, the permittees shall submit to the Executive Director water quality certification, waste discharge requirements, or any other required approvals from the California Regional Water Quality Control Board, San Francisco Bay Region. Failure to obtain such certification prior to the commencement of any dredging episode shall terminate the Commission's authorization for that episode. The Executive Director may, upon review of the Regional Board approval, either approve the dredging episode consistent with this authorization, or amend this authorization, as necessary, related to water quality issues. Unless the permittees agree to amend this authorization in a manner specified by or on behalf of the Commission, this permit shall become null and void
 - 2. **Limits on Dredging.** This permit authorizes one-time new and maintenance dredging within the area shown on Exhibit B to an authorized project depth of 12.5 feet below MLLW, plus two feet of allowable over-dredge depth allowance. Following the completion of the initial new dredging activity, the permittees are allowed to conduct maintenance dredging of up to 10,000 cubic yards of sediment per episode, every

three to four years, to a depth of minus 12.5 feet MLLW with two feet of over-dredge depth allowance until the year 2021 only, after which any additional maintenance dredging would require further Commission authorization.

3. **Episode Request and Notice.** At least 45 days before the commencement of any dredging and disposal episode authorized herein, the permittees shall submit to the Commission's Executive Director:
 - a. A bathymetric map showing the location of all areas authorized to be dredged, the proposed dredge depth including over-dredge depth based on MLLW, the volume of sediment proposed to be dredged, and the approximate date of project commencement. At least two weeks prior to any dredging episode, the permittees shall notify the Commission staff of the commencement date by telephone or in writing. If the date of commencement changes, the permittees shall provide an updated schedule as soon as it is available.
 - b. A written statement to the Executive Director that contains: the proposed disposal site and quantity of material to be disposed, and dates within which the disposal episode is proposed; if applicable, a discussion as to how the volume proposed for disposal is consistent with in-Bay disposal allocations and disposal site limits; the results of chemical and biological testing of sediment proposed for disposal; and an alternatives analysis or integrated alternatives analysis to explain why ocean disposal, upland disposal or beneficial reuse of dredged material is infeasible or a signed Small Dredger Programmatic Alternatives Analysis agreement form if the permittee fits the criteria of a small dredger.
4. **Authorization of Disposal.** The authorization for the proposed in-Bay disposal shall become effective only if the Commission staff: informs the permittees in writing via letter or email that the episode is consistent with the authorization provided herein, alternative disposal and beneficial reuse options are infeasible, the volume proposed for disposal is consistent with both in-Bay disposal allocations, if applicable, and the disposal site limits, and the material is suitable for in-Bay disposal; or does not respond to the permittee's pre-disposal report within 30 days of its receipt. If the Commission staff determines that: (a) ocean disposal, upland disposal, or beneficial reuse of the material is feasible; (b) the material proposed for disposal is unsuitable for the Bay; or (c) the proposed disposal is inconsistent with in-Bay allocations and disposal site limits, the Commission's authorization for in-Bay disposal shall be terminated.
5. **Post-Dredging Reporting Requirements**
 - a. Within 30 days of completion of each dredging episode authorized by this permit, the permittees shall submit to the Commission a bathymetric map showing the actual areas and depths dredged including over-dredge depth based on MLLW, any dredging that occurred outside the area or below the depths authorized herein, and a written statement indicating the total volume of material dredged [from each berth] and disposed and the disposal location.

- b. If a dredging episode stops for longer than six consecutive months, the permittees must submit, before the dredging episode has resumed, notification to the Commission that dredging will begin again. If a dredging episode is suspended for more than six months, the Commission may require the permittees to complete: new sediment characterization; a re-survey of the dredge area; and/or a revised alternative disposal option analysis.
 - c. If the dredging episode continues longer than one year, whether dredging is continual throughout the year or is fragmented within the episode, the permittee must provide the Commission with the following dredging report: the actual areas and the depth dredged based on MLLW, and any dredging that occurred outside the area dredged; the actual volume of the material dredged; and the volume and location of the material disposed. The dredging report must be submitted no later than one year after the commencement of the episode, and must be submitted every six months thereafter throughout the life of the permit or until the episode is complete. The Commission may require additional sediment characterization, bathymetric surveys, and/or alternative disposal analyses at the commencement of the next episode. Within 30 days of the completion of the episode, the permittees must submit a dredging report as described in Special Condition 3a above.
6. **Seasonal Limitations.** Except as provided below, all dredging and disposal activities shall be confined to the work window, between June 1 and November 30 of any year, to minimize disturbance to the following endangered and special status species:²

Species of Concern	Work Window Period	Consulting Agency
Steelhead and Chinook salmon	June 1 st to November 30 th	NOAA/CDFW
Pacific Herring	March 1 to November 30	CDFW

CDFW-California Department of Fish and Wildlife; NOAA-NMFS

No work inconsistent with the time and location limits contained in these figures may be conducted without the approval of the Executive Director, provided that such approval may only be issued after: consultation with CDFW for impacts to herring and salmonids has occurred; if applicable, a herring waiver has been received and provided to Commission staff; the proposed dredging outside the salmonid work window has been discussed with the LTMS Program Managers and a

² This work window between June 1 and November 30 is consistent with Tables F-1 and F-2 of Appendix F, "In-Bay Disposal and Dredging," and Figures 3.2 and 3.3 of the Long-Term Management Strategy (LTMS) Management Plan (2001) and as amended by the USFWS on May 28, 2004, and by NOAA Fisheries on July 9, 2016. It is also consistent with the individual project consultation completed by NMFS on June 30, 2014 and the incidental take permit issued by CDFW on July 9, 2015.

beneficial reuse disposal site benefitting fish habitat has been identified; and the Executive Director has determined that dredging and disposal outside of the work window is consistent with the Commission's laws and policies.

7. **Longfin Smelt.** To avoid take of listed longfin smelt, the permittees shall use a mechanical dredge, such as a clamshell bucket to complete both new work and maintenance dredging.
8. **Barge Overflow Sampling and Testing.** Results of any effluent water quality or other testing required by the RWQCB, San Francisco Bay Region shall be submitted in writing to Commission staff at the same time such testing is submitted to the Regional Board.
9. **Monitoring and Enforcement.** The permittees shall allow the Commission staff or representatives of other state or federal agencies to come aboard the dredge or barge associated with any dredging or disposal episode subject to reasonable safety and operational considerations and observe the operation(s) to ensure that these activities are consistent with pre-dredging reports required herein and other terms and conditions of this permit. Further, the Commission reserves the right to have post-dredging reports inspected by a reliable third party familiar with bathymetric mapping in order to verify the contents of these reports. If a third party selected by or on behalf of the Commission indicates that a post-dredging report is inaccurate, the Commission reserves the right to require the permittees to submit a revised report that meets the conditions of this permit. If the Commission determines that the post-dredging report indicates that work has occurred beyond that authorized by this permit such violation may result in the initiation of enforcement action by or on behalf of the Commission.
- J. **Seismic Instrumentation.** No later than one year prior to the commencement of the authorized ferry terminal construction, the permittees shall consult with the California Geological Survey (CGS), who oversees the California Strong Motion Instrumentation Program (CSMIP), and prepare a plan for the installation of strong-motion seismographs and/or other related equipment at the project site. Subsequently, the permittees shall submit the plan, including installation location and details, for the review and approval by or on behalf of the Commission. By completion date of the project authorized herein, the permittees shall install or ensure installation of the seismic instrumentation equipment in a manner consistent with the advice of CGS and with Commission review and approval.
- K. **Fill Removal.** The permittees shall offset impacts of fill authorized herein through the removal of a minimum of 28,150 square feet (0.65 acres) of fill material at an authorized site in San Francisco Bay.

By June 1, 2017, the permittees shall deposit \$1,155,000.00 into an interest bearing account held by the California State Coastal Conservancy (Conservancy) for the purpose of removing existing fill as part of the Terminal Four Wharf and Warehouse Removal project in the City of Richmond, Contra Costa County. The permittees shall ensure that the funds will be used to remove a minimum of 28,150 square feet (0.65

acres) of fill at the Terminal Four site. If, by June 1, 2017, the funding is not provided to the Conservancy, the permittees shall provide a 5% “late” fee (based on the original mitigation amount of \$1,155,000.00) or \$57,750.00 and, if funding is not provided by December 1, 2017, a 10% “late” fee of \$115,500.00 shall be provided.

If, by January 1, 2018, the permittees fail to provide funding to the Conservancy, the Commission shall determine whether alternative mitigation to offset impacts of authorized fill shall be required. The permittees shall be responsible for identifying a comparable and alternative fill removal proposal and obtaining all necessary review and authorization to ensure that the project is carried out prior to the installation of fill authorized herein and no later than the completion of the project authorized herein.

- L. **Protection of Special-Listed Fish Species and Habitat.** The permittees shall conduct construction activities authorized herein in compliance with recommendations identified in the National Marine Fisheries Service’s (NMFS) Endangered Species Act (ESA) Section 7 Biological Opinion, and the Magnuson-Stevens Fishery Conservation Management Act Essential Fish Habitat (EFH) Consultation dated June 30, 2014, and the California Department of Fish and Wildlife (CDFW) Incidental Take Permit (ITP) dated July 9, 2015, to minimize disturbance to identified special-status species, including: (1) the use of measures to reduce turbidity in the water column, such as silt curtains, and carrying out activities during periods of low tide; (2) the removal of piles using direct pull or vibratory extraction; (3) the restriction of pile driving from June 1 to November 30; (4) the employment of a “soft start” technique when using impact hammers to pile drive to allow fish to move out of the area, cushioning impact hammers, and operating a single hammer at a time; (5) the employment a bubble curtain or other device to attenuate underwater sound levels; (6) the implementation of hydro-acoustic and biological monitoring plans to the resource agencies; (7) the stationing of a biologist at the site; and (8) the provision of monitoring and status reports, including a final mitigation report, to CDFW, and the purchase of 0.30 acres of species credit from a CDFW-approved mitigation or conservation bank.
- M. **Water Quality Certification.** The permittees shall conduct work and activities authorized herein in compliance with the requirements of the water quality certification issued by the California Regional Water Quality Control Board (RWQCB), San Francisco Bay Region, on September 23, 2016, including: (1) the development and implementation of a Spill Prevention Control Plan (SPCC) plan to address emergency cleanup of hazardous materials; (2) the prevention of site pollution by prohibiting vehicular access; and (3) the treatment of stormwater by installing equipment to prevent runoff into the Bay, installation of a bioretention planter at the northeast edge of the plaza, and implementation of best management practices (BMPs) during construction and dredging activities.
- N. **Sea Level Rise and Flooding.** The permittees shall construct the authorized passenger boarding, waiting and circulation areas, and public access facilities, including a one-foot-high “flood” curb at the East Bayside Promenade perimeter, at elevations at or above

the Federal Emergency Management Agency (FEMA) 100-year flood elevation estimates for the project site of 11.4 feet NAVD and the projected sea level of 14.5 feet NAVD by 2068. Any additional flood control measures require further review and authorization by the Commission through an amendment to this authorization.

O. **Public Access**

1. **Area.** The approximately 36,000-square-foot (0.83 acres) area, along approximately 550-linear feet of shoreline, as generally shown in Exhibit A, shall be made available exclusively to the public for unrestricted public access including for walking, sitting, viewing, fishing, and picnicking. The public access area includes a 30,800-square-foot area of new access and a 5,200-square-foot area of improved access required in BCDC Permit No. 1997.007.09. If the permittees intend to use the area for other than general public access purposes, they shall first obtain review and written approval by or on behalf of the Commission.
2. **Improvements Within the Public Access Area.** Prior to the use of any structure or facility authorized herein, the permittees shall construct and install the public improvements identified below, which shall substantially conform to the plans entitled "Proposed Public Access and View Corridors", dated March 1, 2016, prepared by Boris Dramov, and be consistent with plans approved pursuant to Special Condition II.A above, and which are generally shown in Exhibit A to this authorization:
 - a. Approximately 695 linear feet of amphitheater seating at the Embarcadero Plaza, three to four feet above the existing grade of Herb Caen Way;
 - b. A 350-foot-long, 42-inch-high guardrail between the Embarcadero Plaza and the adjacent East Bayside Promenade, and the Agriculture Building;
 - c. A 684-foot-long, 42-inch-high guardrail with stainless steel horizontal bars and vertical supports spaced at approximately five feet on center at the eastern and southern shoreline edges of the East Bayside Promenade;
 - d. A 684-foot-long, one-foot-high "flood" curb along the eastern and southern shoreline edges of the East Bayside Promenade;
 - e. Two 17-foot-wide, 19.5-foot-high portals at Gates F and G with a stainless canopy roof and doors;
 - f. Two 13.5-foot-high, 2,500-square-foot canopies (totaling 5,000 square feet) on the East Bayside Promenade, with fritted glass embedded with photovoltaic cells, lighting, and passenger signage, located between Gates E and F, and Gates F and G;
 - g. A 1,470-square-foot cantilever walkway located south of the Agriculture Building, connecting the East Bayside Promenade and Herb Caen Way; and
 - h. Forty six-foot-long benches at the East Bayside Promenade, three sets of solar-powered waste and recycling stations, including three columnar pedestal ashtrays, and three 22-foot-high surface-mounted lighting structures.

3. **Maintenance.** The public access areas and improvements required herein shall be permanently maintained by and at the expense of the Port of San Francisco or its assignees or successors in interest. Such maintenance shall include, but is not limited to: repairs to all path surfaces and designs; repairs or replacement as needed of all public access amenities (e.g., signs, benches, lights, canopies, handrails, seating); cleanup of litter and other materials; and removal of any encroachments at the public access areas. Within 15 days after notification by Commission staff, the permittees shall correct maintenance deficiencies noted in a staff inspection report.
4. **Reasonable Rules and Restrictions.** The permittees may impose reasonable rules and restrictions for the use of the public access areas to correct particular problems that may arise. Such limitations, rules, and restrictions shall have first been reviewed and approved by or on behalf of the Commission upon a finding that the proposed rules would not significantly alter the public nature of the area, would not unduly interfere with reasonable public use of the access areas, and would tend to correct a specific problem identified and substantiated by the permittees.
5. **Special Events and Additional Public Amenities.** The permittees shall not hold commercial or private events at the public access areas required herein. Small public events and, in rare circumstances, large public events such as Fleet Week and Fourth of July celebrations, may be allowed within the public access areas, including the Embarcadero Plaza. All special events must be approved in writing by or on behalf of the Commission at least 30 days prior to the public event. No such events shall significantly interrupt the general public's use of the required public access area or views of the Bay. Events shall be limited to a period of 48 hours, including set-up and removal of event facilities.

If the permittees propose to use the required public access areas for commercial uses, including a farmer's market, an amendment to this permit for such activity must be sought and considered and authorized by or on behalf of the Commission.

If, at any time, the permittees propose to place additional moveable and/or temporary public access amenities at the required public access areas, such as small tables and chairs, the permittees shall seek and receive the review and written approval of such facilities by or on behalf of the Commission, at least 30 days prior to the placement of any such amenities at the project site.

- P. **Certificate of Occupancy or Use.** Prior to occupancy or use of any of the improvements authorized herein, the permittees shall submit the Notice of Completion and Compliance required herein and request in writing an inspection of the project site by the Commission staff. Within 30 days of receipt of the written request for an inspection, the Commission staff will: review all permit conditions; inspect the project site; and provide the permittees with written notification of any outstanding permit compliance matters. The permittees shall not occupy or make use of any improvements authorized herein until the Commission staff confirms that identified compliance problems have been satisfactorily resolved and has provided the permittees with a Certificate of Occupancy or Use. Failure by the Commission staff to perform such review and inspection and

notify the permittees of any deficiencies of the project within this 30-day period shall not deem the project to be in compliance with the permit, but the permittees may occupy and use the improvements authorized herein.

III. Findings and Declarations

This permit is issued based on the Commission's findings and declaration that the authorized work is consistent with the McAteer-Petris Act, the *San Francisco Bay Plan (Bay Plan)*, the San Francisco Waterfront Special Area Plan (SAP), the California Environmental Quality Act (CEQA), and the Commission's amended management program for the San Francisco Bay segment of the California coastal zone for the following reasons:

- A. **Use.** The SAP Map No. 3 identifies the project site as an open water area where allowable uses include those that are consistent with the Public Trust Doctrine and the Port's Legislative Trust Grant, water transportation structures, and uses related to Bay-oriented Public Assembly and public access. The SAP Geographic Specific, Northeastern Waterfront Policy No. 1 requires removal of Pier 2 as part of the Ferry Terminal "Phase 2" development project. Policy No. 2 allows for "minor pile-supported or floating fill for water transportation uses, pile-supported fill for Bay-oriented assembly uses," "areas appropriate for additional ferry terminals," and "minor fill for public access to the Bay."

Presently, Gate E, the Southern Promenade, the remaining portion of Pier 2, and open water lagoon are located at the project site. The Pier 2 shed (i.e., restaurant) was removed per BCDC Permit No. 2012.001.06, and the remaining pier will be removed as part of this authorization. The fill activities will result in the expansion of a ferry terminal and water transit service, the creation of an emergency evacuation space, and the improvement and development of new public access – all Public Trust uses as determined by the California State Lands Commission, and also consistent with the Port's Legislative Trust Grant, which gives the Port primary land use jurisdiction over all development of property around the Ferry Terminal area under the Burton Act. Special Condition II.P requires the permittees to nautical charts to depict the site as a water-transit facility.

- B. **Bay Fill.** Section 66605 of the McAteer-Petris Act provides, in part, that the Commission may allow fill in the Bay when the activity meets the following requirements:

(a) "the public benefits from fill must clearly exceed the public detriment from the loss of water areas;" (b) fill "should be limited to water-oriented uses" or "minor fill for improving public access to the Bay;" (c) fill in the Bay should be approved only when "no alternative upland location" is available; (d) fill should be "the minimum amount necessary to achieve the purpose of the fill;" (e) "the nature, location, and extent of any fill should be such that it will minimize harmful effects to the Bay area, such as, the reduction or impairment of the volume, surface area or circulation of water, water quality, fertility of marshes or fish or wildlife resources, or other conditions impacting the environment...;" (f) "fill [should] be constructed in accordance with sound safety standards which will afford reasonable protection to persons and property against the hazards of

unstable geologic or soil conditions or of flood or storm waters;” and
 (g) “fill should be authorized when the applicant has such valid title to the properties in question that he or she may fill them in the manner and for the uses to be approved.”

- a. **Public Benefit v. Public Detriment.** In the Bay, the project involves the removal and placement of fill in the Bay, including the removal of the 21,000-square-foot Pier 2, and the filling of a 10,000-square-foot lagoon (covering the open water area with a deck) to create a pile-supported public access plaza and emergency evacuation space. Additional Bay fill is associated with the improvement and expansion of the Southern Promenade, and the creation of Ferry Gates F and G. In total, the project will result in a net increase of 28,150 square feet of pile supported, cantilevered, and floating fill, and a net decrease of 227 cubic yards of solid fill. Additionally, the applicants will improve 5,200 square feet of required public access, and create 30,800 square feet of new required public access. The project also involves new and maintenance dredging, and the temporary extended mooring of construction-related barges.

The existing ferry gates at the San Francisco Ferry Terminal serve up to 5,100 ferry passengers per weekday. The construction of new gates, boarding, and circulation areas will facilitate expanded service to and from San Francisco for up to 19,160 passengers per weekday, thereby reducing automobiles on the road. The project includes raising the existing public access space (required by BCDC Permit No. 1997.007.09) to be resilient to future sea level rise and flooding, and create 30,800 square feet of new public access. The 10,000-square-foot lagoon presently serves an open water area for fishing and viewing the Bay. It will be filled to create the 15,950-square-foot Embarcadero Plaza, which will also serve as an emergency queuing area to help evacuate “up to 7,200 people per hour” in cases of emergency. The elevation of the project site would connect to adjacent public access at the Ferry Terminal and along Herb Caen Way, and is designed to connect to the Agriculture Building when remodeled at a future date.

As a result of the net increase in Bay fill, the permittees are required to remove 28,150 square feet of fill (0.65 acres) as a part of the Terminal Four project in the City of Richmond, Contra Costa County, as required by Special Condition II.K, and, thus, the proposed project would ultimately result in no new net fill.

- b. **Water-Oriented Use and Minor Fill for Public Access.** Section 66605 of the McAteer-Petris Act identifies public assembly as an allowable type of fill. The section does not specifically identify ferry terminals as a water-oriented use, but Bay Plan findings and policies on transportation recognize such facilities as an appropriate use of the Bay. Section 66605 also allows a “minor amount of fill” for public access. The fill associated with the proposed water transit project will create space to be shared by passengers, evacuees from the City of San Francisco in the event of an emergency, and the general public.

- c. **Upland Alternative.** The marine-based terminal will take advantage of its location on the Bay and constitutes a use for which there is no upland alternative. The gates and public access areas are facilities that require and benefit from their over-water locations to achieve the overall project purpose, including water transportation and emergency evacuation via ferries. According to the permit application, the filling of the open-water lagoon to create the Embarcadero Plaza will “provide a critical area for passenger staging and queuing in the even of an emergency evacuation.” Additionally, the application states: “the creation of the Embarcadero Plaza will improve passenger circulation in the Ferry Terminal area, addressing existing circulation constraints that would become more significant as new water transit routes are implemented in the Ferry Terminal area.”
- d. **Minimum Amount of Fill.** The project will result in a net increase of approximately 28,150 square feet (0.65 acres) of Bay fill, and a net decrease of 227 cubic yards of solid fill. The purpose of the fill “is to improve water transit facilities...and to improve facilities to support emergency operations,” and to enhance public access. Further, the “design of the project, including areas of additional fill for vessel docking, passenger queuing, and emergency coordination, is based on the anticipated water transit ridership, as well as emergency staging and evacuation needs” and, therefore, is the minimum necessary to meet the project purpose.

The SAP states, in part: “[t]he amount of new pile-supported fill...will be offset by removal of an equivalent amount of pile-supported fill elsewhere on the Northeastern Waterfront ...” The permittees will remove a quantity of fill equal to the proposed net increase of fill resulting from the proposed water transit project, at a dilapidated terminal located in the City of Richmond, Contra Costa County. The fill removal project is part of the Terminal Four Wharf and Warehouse Removal Project managed by the California State Coastal Conservancy. The permittees explored options for fill removal in the City and County of San Francisco, but determined that no such opportunities are available. The additional 21,000 square feet of fill placed in the Bay will be offset by the removal of the Pier 2 structure to a disposal facility outside the Commissions jurisdiction, as required by Special Condition II.G, resulting in an equivalent amount of fill removed from the Bay as is being placed by the project.

- e. **Minimizing Impacts.** According to the Final Environmental Impact Statement and Record of Decision/Environmental Impact Report for the Downtown San Francisco Ferry Terminal Expansion Project (FEIS/EIR), and the biological opinions on the project from the federal resource agencies, the Ferry Terminal area is a disturbed environment in comparison to other open water and less developed portions of Central San Francisco Bay. However, fill from the project will result in loss of benthic habitat, and shading from overwater structures. Aquatic species that may occur in the project area include the Sacramento River Winter-Run Chinook Salmon, the CV Spring-Run Chinook Salmon, longfin smelt, steelhead salmon, and green sturgeon. The permittees will remove piles by vibratory extraction. New piles will be installed using an impact hammer that would employ a “soft start” technique to give

fish an opportunity to move out of the area. Impact hammers will be cushioned using a 12-inch-thick wood cushion, and only a single hammer would be operated at a time. During hammering, a bubble curtain or other device would be used to attenuate underwater sound levels.

During dredging activities, a clamshell dredge will be used in the months of June through November, which coincides within the programmatic work windows established by the *LTMS for the Placement of Dredged Material in the San Francisco Bay Region*. According to NMFS, this time period will avoid the migration seasons of listed salmonids, and will not affect year-round green sturgeon. NMFS, CDFW, and the RWQCB recommended additional measures to protect natural resources, as required by Special Conditions II.L and II.M.

The project will result in no new net fill in San Francisco Bay. The design and arrangement of the piles and facilities will not adversely affect oxygen levels, water circulation, or tidal interchange in the Bay. The FEIS/EIR concluded that the overall project impacts would be “less than significant or less than significant with the implementation of mitigation measures.”

- f. **Sound Safety Standards.** In addition to the provision on safety of fills contained in Section 66605 of the McAteer-Petris Act, the Bay Plan Policy No. 1 on Safety of Fills states, in part: “The Commission has appointed the Engineering Criteria Review Board [ECRB]...to: (a) establish and revise safety criteria for Bay fills ...; (b) review ... projects for the adequacy of their specific safety provisions, and make recommendations concerning these provisions ...” Policy No. 2 states, in part: “... no fill or building should be constructed if hazards cannot be overcome adequately for the intended use in accordance with the criteria prescribed by the [ECRB or Board].”

Originally, the ECRB reviewed the proposed project on October 22, 2015, and focused on whether the design would be seismically sound, serve its purpose as an emergency evacuation facility, and be protected from future sea level rise and storm activity. The Board expressed concern over potential damage to concrete piles, stability of the joints, horizontal and vertical displacement of the pile-supported deck, and the capacity of the pile-supported structure, namely the proposed Embarcadero Plaza, to withstand the collapse of the seawall along The Embarcadero and serve the continued function as an emergency evacuation space.

The Board requested that the permittees provide the following information to better assess the engineering design criteria for the project: (1) results of the Fast Lagrangian Analysis of Continua (FLAC) analysis, an advanced multi-dimensional geotechnical modeling program used for modeling complex soil and structural behaviors, that could expose the risk of liquefaction impacts on the piles and overall structure including a potential collapse of the seawall; (2) a displacement evaluation on the sliding joints; (3) adaptive approaches to sea level rise; (4) information on emergency plans to access the structure were it to separate from the mainland due

to liquefaction; and (5) a proposal for seismic instrumentation appropriate for the project, to be coordinated with the California Strong Motion Instrumentation Program run by the California Geological Survey.

On March 30, 2016, the ECRB considered information provided by the permittees. The purpose of the FLAC analysis was to estimate seismic deformation of the seawall and related impacts to the proposed ferry terminal structure³. The results of the FLAC analysis revealed the potential for liquefaction of upper sand layers previously thought to be safe. Consequently, the permittees recommended a change of the pile design to better withstand liquefaction and maintain the structural integrity of ferry terminal, including changes to pile layout, piling size, and other design features⁴. Because of the potential obstructions from remnants piles from previous structures, the new deck structure was also modified from a cast-in-place (c-i-p) deck-and-pile cap-connected-to-piles system, to a c-i-p 18-inch thick flat (no cap) slab system connected to piles that will provide flexibility for pile layout and better design performance due to improved pile/deck interaction in the event of major ground displacement. Additionally, the joints between East Bayside Promenade, Embarcadero Plaza, and the Agriculture Building were removed, resulting in open waters between the Agriculture Building and the new ferry terminal.

The permittees stated that the ferry terminal, including the plaza and passenger queuing areas at the site, will be designed to meet “Essential Facility” standards to support the queuing and circulation needs in the event of an emergency and evacuation. However, although the FLAC analysis showed that the plaza and promenade of the new ferry terminal would be safe during a major earthquake, there was some safety uncertainties regarding the areas outside the project scope, e.g., the seawall and areas landward, that could still experience major settlement and damage during that event. Therefore, the Board requested information on emergency plans to access and evacuate the entire structure were it to separate from the mainland. Pursuant to this inquiry, the applicants presented the Port’s Emergency Operations Manual to Commission staff, which states that the Port will “immediately conduct a rapid assessment of damage,” and arrange for “construction of temporary access between landside and terminal areas. Such temporary access improvements may include installation, in-kind maintenance, and removal of bridging components or other structures to provide pedestrian egress and access to the ferry terminal, and the provision of temporary electrical power for the use of the terminal facilities such as lighting and float hydraulic platforms.” Special Condition II.B requires the permittees to construct the project to “Essential Facility” standards, including providing access to the ferry terminal in case of a major seismic event.

³ The FLAC analysis is also used to evaluate potential impacts of deformation of the soil mass, settlement behind and of the seawall, differential movement of the proposed structure, and the loads that could possibly be induced onto the proposed piles of the structure due to moving ground.

⁴ The location of the piles was also improved by increasing the spans, incorporating cantilevering sections at the edges of the proposed plaza next to the seawall, the BART deck, and the Agriculture Building, and increasing the size of the piles closest to the seawall to 30-inch-diameter, so they would better withstand load stresses.

The Bay Plan Policy No. 3 on Safety of Fills states: “[t]o provide vitally needed information on the effects of earthquakes on all kinds of soils, installation of strong-motion seismographs should be required on all future major land fills. In addition, the Commission encourages installation of strong-motion seismographs in other developments on problem soils, and in other areas recommended by the U.S. Geological Survey, for purposes of data comparison and evaluation.” On October 22, 2015, the Board requested a proposal for seismic instrumentation appropriate for the project, to be coordinated with the California Strong Motion Instrumentation Program run by the California Geological Survey. The Board reiterated its request during additional review on March 30, 2016. Special Condition II.J requires the permittees to consult with CGS and develop a plan to install strong-motion seismographs within two years of issuance of this permit. Furthermore, the Condition requires seismic instrumentation to be installed prior to completion of the project.

The FEMA 100-year-flood elevation estimates for the project site are 11.4 feet NAVD88, and the future sea level rise projections are 14.5 feet NAVD (by 2068)⁵. The passenger and boarding areas, and public access, will be built at an elevation of 14.5 feet NAVD88, as required by Special Condition II.N. The ferry gates would float with the tides. Therefore, the project, including all facilities, will not be subject to future sea level rise and associated flooding over the life of the project. In order to mitigate any impacts that could arise from rising sea levels not currently anticipated, the permittees will build a one-foot-high curb at the East Bayside promenade perimeter of the circulation and public access areas, to an elevation of 15.5 feet NAVD88. In the event the terminal and public access remain beyond the intended life of 50 years (through 2068), the permittees prepared sea level rise estimates for the year 2100, up to 15.5 feet NAVD. Under that scenario, sea level rise will exceed the proposed deck and curb elevation of 15.5 feet, in which case the perimeter curb can be raised to 17 feet NAVD88.

Following review on March 30, 2016, the Board acknowledged that the permittees had addressed the comments raised by the ECRB at the last October 22, 2015 meeting, and determined that the engineering criteria used to design the project met acceptable standards with the condition that some additional information including the emergency evacuation plan be submitted to the staff for final review. Therefore, as designed, the piles and decking will be strong enough to withstand a large seismic event, will not be negatively affected by liquefaction bayward and landward of the seawall, and the project provides measures to prevent damage from sea level rise and storm activity. As designed, the project will also be able to serve its purpose as an essential facility and emergency evacuation structure.

- g. **Valid Title.** In May 2015, WETA and the Port entered into a Memorandum of Understanding (MOU) that outlines roles and responsibilities for the operation and maintenance of the proposed project. The MOU states that the Port has primary

⁵ National Research Council, 2012

land use jurisdiction over all development of property around the Ferry Terminal area under the Burton Act, and that WETA is permitted to operate ferry services under License Agreement #14955 between WETA and the Port. The Port and WETA are coordinating the project, and will enter into a Disposition and Development Agreement, as well as a new license or lease agreement for continued WETA operations at the new ferry facilities.

Based on the above discussions and as conditioned herein, the Commission finds the public benefits of the project clearly outweigh the detriments caused by the Bay fill, and the project is consistent with the Commission's laws and policies on the placement of fill in San Francisco Bay.

- C. **Transportation.** The SAP Geographic-Specific Policies for the Northeastern Waterfront Policies on Transportation and Parking, Policy No. 2 states: "[t]o minimize traffic impacts on the waterfront, expansion of the water transportation system should be accommodated by identifying areas where new terminals and landside facilities can be constructed." In addition, the Bay Plan Transportation Policy No. 5 states, in part, that ferry terminals should be sited, wherever possible, "near higher density, mixed-use development served by public transit."

The project will expand ferry service to and from San Francisco at an area designated in the SAP for expanded use, and, consequently, enhance public transit alternatives in the immediate vicinity of the project and for the region as whole. Additionally, the project is located near or adjacent to other transit alternatives, including the San Francisco Municipal Railway (MUNI), Bay Area Rapid Transit (BART), Caltrain, bicycle and pedestrian routes, and the Transbay Terminal. For these reasons, the Commission finds the project consistent with its SAP and Bay Plan policies regarding transportation.

- D. **Natural Resources.** In addition to Section 66605(d) of the McAteer-Petris Act concerning the project's effects on resources, the Bay Plan Policy No. 1 on Fish, Other Aquatic Organisms and Wildlife states, in part: "[t]o assure the benefits of fish, other aquatic organisms and wildlife for future generations, to the greatest extent feasible, the Bay's tidal marshes, tidal flats, and subtidal habitat should be conserved, restored and increased." Policy No. 2 states, in part: "[s]pecific habitats that are needed to conserve, increase or prevent the extinction of any native species, species threatened or endangered ... should be protected..." Policy No. 4 states, in part: "[t]he Commission should: (a) Consult with [CDFW] and the U.S. Fish and Wildlife Service [USFWS] or [NMFS] whenever a proposed project may adversely affect an endangered or threatened plant, fish, other aquatic organism or wildlife species; (b) Not authorize projects that would result in the "taking" of any plant, fish, other aquatic organism or wildlife species listed as endangered or threatened ... unless the project applicant has obtained the appropriate "take" authorizations ...; and (c) Give appropriate consideration to the recommendations of [CDFW], [NMFS] or the [USFWS] in order to avoid possible adverse effects of a proposed project on fish, other aquatic organisms and wildlife habitat."

Bay Plan Policy No. 2 on Water Quality states: "Water quality in all parts of the Bay should be maintained at a level that will support and promote the beneficial uses of the Bay as identified in the [RWQCB's] Water Quality Control Plan, San Francisco Bay Basin and should be protected from all harmful or potentially harmful pollutants. The policies, recommendations, decisions, advice and authority of the State Water Resources Control Board and the [RWQCB], should be the basis for carrying out the Commission's water quality responsibilities." Policy No. 3 states, in part: "New projects should be sited, designed, constructed and maintained to prevent or, if prevention is infeasible, to minimize the discharge of pollutants into the Bay..." Bay Plan Policy No. 1 on Water Surface Area and Volume states, in part: "The surface area of the Bay and the local volume of water should be kept as large as possible in order to maximize oxygen interchange, vigorous circulation, and effective tidal action."

Bay Plan Policy No. 1 on Subtidal Areas states: "Any proposed filling or dredging project in a subtidal area should be thoroughly evaluated to determine the local and Bay-wide effects of the project on: (a) the possible introduction or spread of invasive species; (b) tidal hydrology and sediment movement; (c) fish, other aquatic organisms and wildlife; (d) aquatic plants; and (e) the Bay's bathymetry. Projects in subtidal areas should be designed to minimize and, if feasible, avoid any harmful effects."

According to the permittees, the project area has been disturbed by human-related activities, and will be used for various fill activities, including the construction of expanded ferry vessel and passenger facilities, public access, and emergency evacuation space. Additionally, initial and maintenance dredging will take place, with disposal of dredged sediment occurring at in-Bay, the deep ocean disposal site or beneficial reuse at a wetland restoration site. Benthic habitat at the project site will be lost or affected.

Special status aquatic species potentially present at the site are the threatened CCC steelhead, CV steelhead, spring-run Chinook salmon, longfin smelt and southern DPS green sturgeon, and the endangered Sacramento River winter-run Chinook salmon. The area is also designated as critical habitat for Sacramento River winter-run Chinook salmon, CCC steelhead, and southern DPS sturgeon.

On June 30, 2014, pursuant to Section 7 of the ESA, and the EFH provisions of the Magnuson Stevens Fishery Conservation and Management Act, NMFS issued a biological opinion and found the proposed project can result in a take (i.e., mortality and/or injury) of threatened green sturgeon from pile driving, dredging, turbidity, contaminants, and sound. Additionally, NMFS found that the project will adversely affect EFH for federally-managed fisheries, including groundfish and salmon, from increased noise and turbidity, exposure to contaminated sediments, disturbance of benthic habitat, increased shading, and potential introduction of invasive species from pile-driving and dredging. NMFS determined that the anticipated take of listed threatened or endangered species would be "very small."

The permittees will offset potential impacts of shaded and solid fill by removing pilings and decking material at the Terminal Four Wharf and Warehouse Removal Project in the City of Richmond. Since habitat at the project site is degraded, NMFS expects fill removal elsewhere in the Bay to fully compensate for any loss. To minimize impacts of turbidity and sediment-associated contaminants, measures will be implemented to contain material and reduce distribution into the water column, such as silt curtains, and timing activities to periods of low tide. NMFS expects that given high current velocities in the Bay, minor levels of suspended materials would quickly disperse from the project site with tidal circulation.

Pile removal activities will use direct pull or vibratory extraction. Piles that cannot be removed entirely will be cut to at least two feet below the mudline. Pile driving will be restricted to the period of June 1 and November 3, and an impact hammer will employ a “soft start” technique to give fish an opportunity to move out of the area. Impact hammers will be cushioned using a 12-inch-thick wood cushion, and only a single hammer will operate at a time. During hammering, a bubble curtain or other device will be used to attenuate underwater sound levels. When feasible, vibratory hammers will be used to reduce noises.

NMFS has determined that it is unlikely individual fish would occur within the project site, as construction activities would startle fish away. NMFS expects the number of green sturgeon exposed to noise to be small due to the short duration of the pile-driving period, the area of effect is small, and the abundance of green sturgeon in the area is low. NMFS expects the site would become available for listed fish species once pile driving and removal are completed.

NMFS recommended measures to be incorporated into the proposed project construction including: the development of hydroacoustic and biological monitoring plans that provide real-time data to NMFS; preservation of any listed species mortalities observed at the site to determine cause of death; and the preparation of a report (one year following construction), which identifies measures taken to minimize effects on species of concern, and the number of fish killed during construction. NMFS also recommended that the permittees provide funding for salmonid and sturgeon restoration, and funding for monitoring and eradication of invasive species in the Bay. Incorporation of the measures, as recommended by NMFS, will not likely jeopardize the continued existence of the above-identified species, nor adversely modify or destroy critical habitat.

The project’s overall increase of fill in San Francisco Bay will be negligible in comparison to the total surface area of San Francisco Bay (approximately 0.65 acres of fill compared to approximately 327,000 acres of open waters in San Francisco Bay). The project will have no overall new increase of fill into San Francisco Bay, when taking into account fill removal, which combined with the design and arrangement of the piles and facilities, and will not adversely affect oxygen levels, water circulation, or tidal interchange in San Francisco Bay.

The Ferry Terminal area is suitable for the invasive species *Undaria*. However, the area does not currently support submerged aquatic vegetation. Increased vessel traffic from the construction and additional ferries may help spread *Undaria*. WETA dry-docks all vessels every year for hull cleaning and refinishing. Invasive species are not anticipated to spread via vessels or ferries.

On July 9, 2015, CDFW issued ITP No. 2081-2015-013-07 for the proposed project. The ITP covered the endangered Sacramento River winter-run Chinook salmon, the threatened CV spring-run Chinook salmon, and the longfin smelt. CDFW expects incidental take of individuals of the covered species from pile driving activities, noise, contaminated sediments, potential impacts from spills of pollutants, and permanent habitat loss.

CDFW implemented the following conditions to mitigate incidental take of covered species, among other things: (1) presence of a qualified biologist; (2) education of all persons working on the project area regarding covered species; (3) cleanup of hazardous wastes; (4) removal of all debris and refuse; (5) compliance monitoring, including a monthly compliance report with all conditions of the ITP; (6) annual status reports, including a final mitigation report once the project is completed; (7) notification of take or injury of covered species, including a report on cause of death and other pertinent information; and (8) purchase 0.30 acres of covered species credits from a CDFW-approved mitigation or conservation bank.

To prevent and contain construction-related contaminants from adversely affecting water quality, the applicants will prepare a SPCC plan to address emergency cleanup of hazardous materials. Fueling of land and marine-based equipment will be conducted in accordance with procedures in the SPCC. Equipment used will be in good condition, inspected daily, and serviced off-site if maintenance is needed. Any leaks will be cleaned up, and not allowed to enter the water, if possible. All construction materials, wastes, etc., will be removed from site and transported to an authorized disposal area outside the Commission's jurisdiction.

On September 23, 2016, the RWQCB issued a water quality certification for the project. In considering the project, the RWQCB found that the project will result in solid fill and shading of open water, which can potentially alter benthic habitats and the primary physical processes, including depth, substrate type, wave energy, and light in the project site. Additionally, water quality may be impacted from the use of diesel-powdered equipment, spills, discharges of debris, in-water construction, dredging, and storm-water.

The water quality certification is conditioned to require the applicants to, among other things: (1) prevent site pollution by prohibiting vehicular access and parking on the Embarcadero Plaza, prohibit smoking in the entire circulation and public access areas, and instituting twice weekly cleaning of all areas, as well as after special events and activities; (2) treat stormwater by installing eighteen shallow-depth media filters to prevent runoff into the Bay, install a bioretention planter at the northeast edge of the plaza, and implement BMPs during construction and dredging activities; (3) submit a

final mitigation report once construction is complete; (4) install piles consisting of inert materials, such as steel and concrete; (5) allow concrete to completely cure for a minimum of 28 days before it comes into contact with the water, or be treated with a CDFW approved sealant; and (6) submit a final construction completion report within 30 days of construction completion.

Special Conditions II.E, and II.F require the removal of abandoned fill, and BMP's during construction. Further, Special Condition II.L contained herein required the permittees to comply with the measures identified in the NMFS biological opinion, and the CDFW ITP. Special Condition II.G requires the permittee to remove pilings to two feet below the mud-line, while Special Condition II.M requires the permittee to comply with the RWQCB's certification for the project authorized herein.

For these reasons, the Commission finds that the project, as conditioned, is consistent with the McAteer-Petris Act and Bay Plan policies to protect fish, wildlife, and water quality in part due to the permittees compliance with federal and state recommendations to minimize, project impacts and, thus, ensure protection of Bay resources.

- E. **Mitigation.** In response to a net increase of Bay fill, the permittees will fund the removal of piles and deck structures that have fallen into the Bay, at the Terminal Four Wharf Warehouse Removal project in the City of Richmond, Contra Costa County – a project managed by the Conservancy. The permittees will transfer a minimum of \$1,155,000 for the removal of 28,150 square feet (0.65 acres). The conservancy will complete the work over a three-month period from September 1 to November 31, in either the year 2018, 2019, or 2020. The exact timing has not yet been finalized or authorized. Additionally, NMFS also recommended that the permittees provide funding for salmonid and sturgeon restoration, and funding for monitoring and eradication of invasive species in the Bay. CDFW required the permittees purchase 0.30 acres of covered species credits from a CDFW-approved mitigation or conservation bank.

The permittees will also incorporate other resource agency recommended measures to avoid and minimize project impacts, including: the presence of biological monitors, and the preparation of annual reports. In light of the mitigation and construction minimization measures, NMFS concluded that the project will not likely jeopardize the continued existence of listed species, nor adversely modify or destroy critical habitat.

Special Condition II.M contained herein requires the permittees to comply with the construction minimization measures identified in the NMFS biological opinion and CDFW ITP. Further, Special II.K contained herein requires the permittees to comply with mitigation measures, and transfer funds for fill removal to the Conservancy in a timely manner.

- F. **Dredging.** Bay Plan policies No. 1 and 2 regarding dredging activities state, in part: “dredging and dredged material disposal should be conducted in an environmentally and economically sound manner” and “...dredging should be authorized when the Commission can find: (a) the applicant has demonstrated that the dredging is needed to serve a water-oriented use...; (b) the materials to be dredged meet the water quality requirements of the [RWQCB]; (c) important fisheries and Bay natural resources would

be protected through seasonal restrictions established by [CDFW], the [USFWS] and/or [NMFS]...; (d) the siting and design of the project will result in the minimum dredging volume necessary for the project; and (e) the materials would be disposed of in accordance with Policy 3.” Policy 3 states, in part: if feasible, material should “...be reused or disposed outside the Bay” unless infeasible in which case the Commission must find: “(a) the volume to be disposed is consistent with applicable dredger disposal allocations and disposal site limits adopted by the Commission by regulation; (b) disposal would be at a site designated by the Commission; (c) the quality of the material disposed of is consistent with the advice of the [RWQCB] and the inter-agency Dredged Material Management Office [DMMO]; and (d) the period of disposal is consistent with the advice of the [CDFW], the [USFWS] and/or [NMFS].” Further, the Bay Plan Transportation Policy No. 5 states, in part: “ferry terminals should be sited at locations that are near navigable channels...”

The Ferry Terminal area has served as a navigation area for nearly a century, and continues to serve as a navigation area for water transportation services, and therefore is a water-oriented use. The project will expand ferry services at the Ferry Terminal. WETA states that side-loading vessels, such as the ones used at the Ferry Terminal area, require a depth of 12.5 feet below MLLW on the approach and berthing area. Dredging will be limited to a depth of 12.5 feet below MLLW, plus an additional two-foot over dredge depth allowance.

An initial proposed volume of sediment to be dredged is 20,479 cy of new work will be dredged at the site within a 2.42 acre footprint (Exhibit B). Following the initial dredging episode, up to 10,000 cubic yards of maintenance dredging per episode every three to four years, will likely occur prior to the dredging authorization expiration in 2021. Given that the first episode will be placed out of Bay, and the maintenance dredging volume fairly small, placement of this sediment would likely be within the individual site and in-Bay disposal volume limits if disposed of at one of these sites in the future. According to the permittees, the amount of new dredged material is the minimum necessary to deepen the site of proposed ferry berthing area to safely accommodate the drafts of the ferries.

On September 7, 2016, the DMMO completed its review of the sediment test results for the new work dredging.⁶ The DMMO determined that the sediment from the initial episode is suitable for disposal at the SF-DODS, or to be used as foundation material at Montezuma Wetlands Restoration Project in the Primary Management Area of the Suisun Marsh, Solano County. Montezuma Wetlands Restoration Project was authorized by BCDC Permit No. 1998.014.05md. On September 23, 2016, the RWQCB issued a water quality certification for the proposed new work dredging activities. Prior to any maintenance dredging, the permittees will need to provide new sediment quality test results to determine the suitability of the sediment for any proposed placement site.

⁶ “Sampling and Analysis Report Downtown San Francisco Ferry Terminal Expansion Project South Basin Improvements,” dated July 2016, and “Supplemental Analyses for Sampling and Analysis Report for the Downtown San Francisco Ferry Terminal Expansion Project – South Basin Improvements,” dated August 31, 2016.

Further, in reviewing the project NMFS issued is biological opinion, which recommended that the dredging occur using a clamshell dredge within the environmental work windows of June 1st through November 30th, conforming to the environmental work windows established by the *LTMS for the Placement of Dredged Material in the San Francisco Bay Region*. NMFS does not anticipate turbidity levels from dredging to result in harm or injury to green sturgeon. Additionally, salmonids and sturgeon are expected to spend very little time in the action area due to the degradation of critical habitat at the project site; therefore, bioaccumulation of contaminants is expected to be insignificant. According to NMFS, work conducted between June 1 and November 30 would avoid the migration seasons of listed salmonids, and not affect year-round green sturgeon, minimizing impacts from pile removal, pile driving, and dredging. Thus, NMFS determined that this activity is not likely to jeopardize the continued existence of threatened or endangered salmonids or green sturgeon, nor adversely modify or destroy critical habitat for listed species. Further, the permit requires the permittees to use a mechanical dredge, which is less likely to entrain longfin smelt or other native species than a hydraulic dredge, thereby reducing impacts to this listed species and complying with the CDFW incidental take permit.

For these reasons, the Commission finds that, as required in Special Condition II.I, and using the minimization measures listed in Special Condition II.L, the new and maintenance dredging is consistent with the Bay Plan's policies on dredging.

- G. **Public Access.** Section 66602 of the McAteer-Petris Act states, in part: "public access to the shoreline and waters of the Bay is inadequate and that maximum feasible public access, consistent with a proposed project, should be provided." Section 66605 of the McAteer-Petris Act also states partly that a "minor amount of fill" for public access is allowable.

The SAP General Policy No. 6(a) states (p. 8), in part: "...maximum feasible public access should be provided in conjunction with any development.... Public access should be located at ground or platform level, but minor variations in elevation intended to enhance design of open space may be permitted. Public access should also be open to the sky, although some covering may be allowed if it serves the public areas and does not support structures. Particular attention should be given to the provision of perimeter public access along the platform edge. Other uses may extend to the platform edge subject to the following conditions: i) Such uses should enhance the total design of the project, should serve to make the public access more interesting, and should not divert the public way along more than twenty percent of the total platform edge."

The SAP Geographic Specific - Northeastern Waterfront Policies (p. 26-29) on open water areas allows fill for public access, and Bay-oriented commercial recreation and public assembly. Further, SAP Geographic Specific - Northeastern Waterfront policies on public access (p. 32-38) state, in part, "...maximum feasible public access, consistent with the project [should be provided]." Policy No. 1 states: "[p]ublic access should be provided free of charge...and...provide direct connections to the Bay, both physical and visual." Policy No. 2 states: "[p]ublic access should generally be accessible at any time..." Policy No. 3 states: "[p]ublic access should emphasize passive recreation and focus on its

proximity to the Bay and on the views and unique experiences that nearness to the Bay affords.” Policy 10(a) states: On-pier public access areas should be located to “take advantage of...views....They should incorporate unique and special amenities that draw the public to them, including cultural expression, (e.g., public art, event programming or unique views).” Policy 10c states, in part: “...proposed dedicated public access on a pier that exceeds the maximum public access requirement, consideration may be given to permitting private uses that extend to the platform edge, subject to the following conditions...: such use should enhance the total design of the project, be oriented toward and take advantage of the location at the water’s edge, serve to make the public access more interesting, and should not divert the public right-of-way along more than 20 percent of the total platform edge.” Policy No. 11 states: “The longevity of public access improvements required in permits issued pursuant to this plan should be commensurate with the longevity of the development improvements for which they are required.” Policy No. 13, provides, in part, that public access areas should be designed to include: durable and area-compatible paving material; hand rails that maximize visual access to the Bay for all visitors, including those in wheelchairs, with “a top rail that is comfortable to lean on;” lighting, seating, trash and recycling containers, signage, restrooms, and sheltered from the micro-climate; a maintenance plan with a responsible party; a plan to manage ferry queues to allow “continuous shoreline public access...and no permanent or semi-permanent structures prevent[ing] access....”

The Bay Plan Transportation Policy No. 4 states, in part: “transportation projects on the Bay shoreline...should include pedestrian and bicycle paths that will either be of the Bay Trail or connect the Bay Trail with other regional and community trails.” The Bay Plan Public Access Policy No. 12 states: “The Design Review Board should advise the Commission regarding the adequacy of the public access proposed.” Further, Policy No. 5 states, in part: “Public access should be sited, designed, managed and maintained to avoid significant adverse impacts from sea level rise and shoreline flooding.” Policy No. 6 states, in part: “...public access provided as a condition of development should either be required to remain viable in the event of future sea level rise or flooding, or equivalent access consistent with the project should be provided nearby.”

The project includes the following public access facilities and improvements: the 11,610-square-foot Southern Promenade, renamed “East Bayside Promenade,” including a 42-inch-high guardrail at the eastern and southern edges, two 13.5-foot-high canopied passenger waiting and seating areas adjacent to the ferry gates, and an approximately 578-square-foot Bay viewing area at the southern terminus of the promenade; a 1,470-square-foot pile-supported walkway located south of the Agriculture Building; and the “Embarcadero Plaza” with decorative paving, amphitheater seating, lighting, and a 42-inch-high guardrail along the eastern edge—a 15,950-square-foot public space inclusive of a 10,000-square-foot area constructed over an existing open water lagoon, as shown in Exhibit A.

The East Bayside Promenade will serve the dual purpose of providing perimeter access to the public for walking along, sitting beside, and viewing the Bay, and a waiting and queuing area for ferry passengers. The ferry facilities are projected to accommodate up

to 19,160 passengers per weekday by 2035, including up to 6,000 passengers in the peak morning and afternoon commute hours. WETA will organize the queues in a manner that minimizes conflict with general public visitors, with on-site informational signage and ferry staff; no permanent structures to assist with queue management are proposed. The public walkway located south of the Agriculture Building will connect Herb Caen Way to a bulb-shaped platform at the southern terminus of the East Bayside Promenade where the public could view and enjoy the Bay and partake in other recreational activities, such as fishing.

The proposed 15,950-square-foot Embarcadero Plaza will provide an open space located immediately adjacent to the ferry gate area and Herb Caen Way, and just south of the Ferry Terminal. The plaza will be open to all: ferry passengers passing to and from the gates, the general public enjoying meals purchased from nearby vendors and at the adjacent Saturday and weekday (Tuesday and Thursday) farmer's market, visitors admiring the San Francisco-Oakland Bay Bridge, Yerba Buena Island, and the distant hills, and others in search of respite from adjacent more active areas.

The Embarcadero Plaza will also serve as an evacuation space "for up to 7,200 ferry passengers per hour" in the case of an emergency, such as a significant seismic event.

The public access facilities will comply with ADA standards. In addition, specific amenities, such as handrails and ferry shelters are designed to maximize their transparency and minimize view impacts. The permittees will not use the site for commercial advertisements, but would include informational and way-finding passenger signage. The project does not include parking for vehicles, but is located near municipal and regional transit connections, including MUNI and BART. Public restrooms are available in the adjacent Ferry Terminal. The public access will be dedicated for as long as the project remains in place, and will be maintained by the Port. In total, the permittees will improve 5,200 square feet (0.12 acres) of dedicated existing public access requirements in BCDC Permit No. 1997.007.09, and construct 30,800 square feet (0.71 acres) of new dedicated public access, totaling 36,000 square feet (0.83 acres) of dedicated public access.

The design of the public access area in response to future sea level rise and flooding is addressed in Section B above. The public access will be built to be resilient to 56 inches of sea level rise by the year 2068, taking into account a 50-year design life for the project. In the event the public access remains past its intended life, the access will be adaptable to 68 inches of sea level rise by end-of-century by rising the perimeter curb along the promenade edge by one-foot.

The Commission's Design Review Board (DRB) reviewed the project on three occasions: June 6, 2011, May 11, 2015, and September 14, 2015. The DRB provided positive feedback on and general support for the design of the proposed seating, canopies, railings, and other site amenities. The DRB expressed the need for clear and simple connections to Herb Caen Way and to the adjacent Ferry Terminal from the project site, and continuity with all aspects of the Ferry Terminal waterfront. At its May 11, 2015 meeting, the DRB asked whether the plaza would be used for the weekend farmer's market. The

architect for the project stated that programming decisions would need to be made in the future. At that meeting, the Commission's Bay Design Analyst described to the DRB that WETA had indicated to the BCDC staff that the plaza would need to serve as an emergency evacuation area and will need to be kept open. The DRB Chair, John Kriken, stated that although the project is carefully designed, he had concern over how the plaza would function if a weekend farmer's market was held. In response to DRB advice, the applicants revised the project design to improve on connections, handrails, seating, and other design aspects. A farmers market continued to be proposed at the Embarcadero Plaza.

The original BCDC permit application for the project included a farmer's market within a 10,000-square-foot section of the Embarcadero Plaza on Saturdays, Tuesdays, and Thursdays for a six-hour period excluding non-commute hours and, during other times of the year, for smaller special events, such as a foot race, or a large waterfront spectacle, such as Fleet Week or a 4th of July display. The proposed farmers market use would have occupied the Embarcadero Plaza on 156 days per year, although according to the applicants, if an emergency arose and the plaza was needed for emergency evacuation purposes while the farmer's market was present, "all fixtures and activities [would be removed] within one hour" in order to provide an evacuation space for the Ferry Terminal. If occupied by the farmer's market and special event infrastructure, the public access space would have been reduced by approximately 28 percent, which exceeds the 20 percent that is allowed by the San Francisco Waterfront Special Area Plan policies.

Because of the uncertainty regarding future demands on public access, the project authorized herein does not include authorization for an expansion of the existing farmer's market into the public access areas that are required in this permit. When taking into account the number of people using the ferries, the demand for public access along this portion of the San Francisco waterfront, and the increasing need to alleviate crowding and provide open spaces that are free from commercial infrastructure, the intensity of the farmer's market use is expected to have an adverse effect on public access at the project site. Thus, the proposed farmer's market use is deemed to be inconsistent with the Commission's Bay Plan policies on Public Access, and would not provide maximum feasible public access, as required by the McAteer Petris Act. However, more information and data will be available after the project is completed and ferry transportation and public access use patterns are defined.

It is anticipated that the Commission may consider allowing the Embarcadero Plaza to be used for a Farmer's Market during certain days of the week if, after an 18-month waiting period and evaluation, it can be adequately demonstrated that the plaza is underutilized and would function better with the kind of intense activation that Farmer's Market would bring. The evaluation process should include observing and assessing the use patterns at the Embarcadero Plaza *without* a Farmer's Market (or other regular program of events) for 18 months following the completion Embarcadero Plaza and the Ferry Terminal (including full ferry usage). The evaluation should also include a confirmation by San Francisco Emergency Services officials that use of a farmer's market will not have a deleterious effect on Embarcadero Plaza's use as an

emergency evacuation staging area. Commencement of the evaluation would occur only after the Permittees present to the BCDC staff an evaluation strategy for the Plaza. The elements of the evaluation is expected to include quantitative data demonstrating the average and peak numbers of people regularly using the public spaces throughout the evaluation period, and a qualitative analysis of how people use the Plaza and the types of activities that people are engaged in. Following the 18-month period, the evaluation may be presented to the Commission staff, if the Permittees choose to seek an amendment to this BCDC permit for the purpose of allowing a Farmer's Market to occupy the Plaza during certain days of the week.

Special Condition II.O requires the permittees to maintain the public access open and free of obstructions, except under rare and unusual circumstances, such as public Fleet Week events or a public July 4 waterfront spectacle. Under those circumstances, the permittees shall seek review and approval in writing of such an event and the placement of any related infrastructure by or on behalf of the Commission at least 30 days prior to the event. Additionally, small, short-term public events are expected to be allowed pursuant to the existing authorizations in BCDC permit M1996.013 if those proposed events are consistent with authorization and requirements of this permit and do not adversely affect the public access required herein.

As conditioned, the Commission finds that the project's public access improvements, are the maximum feasible consistent with the project.

H. Review Boards

1. **Engineering Criteria Review Board.** The Commission's ECRB reviewed the project for seismic and engineering design safety on October 22, 2015. The ECRB focused on whether the design would be seismically sound, serve its purpose as an emergency evacuation facility, and be protected from future sea level rise and storm activity. The permittees submitted this information to the ECRB on March 30, 2016. The ECRB reviewed the material and determined that the engineering criteria used to design the project met acceptable standards.
 2. **Design Review Board.** The DRB reviewed the project on three occasions: June 6, 2011, May 11, 2015, and September 14, 2015. The DRB provided positive feedback on and general support for the design of the proposed seating, canopies, railings, and other site amenities. The DRB expressed the need for clear and simple connections to Herb Caen Way and to the adjacent Ferry Terminal from the project site, and continuity with all aspects of the Ferry Terminal waterfront. The DRB stated that the Embarcadero Plaza should remain open, and expressed concern over how the plaza would function in the event a weekend farmer's market was held.
- I. **Other BCDC Permits.** BCDC Permit No. 1997.007.09, issued to the Port, authorizes the existing Southern Promenade and the Gate E. BCDC Permit No. 2012.001.06, issued to the Port and the America's Cup Event Authority requires the removal of the Pier 2 shed. BCDC Permit No. M1996.013.03 issued to the Port of San Francisco allows temporary amenities at various Port facilities.

- J. **Public Trust.** The project authorized herein is to provide public access, and to construct a ferry terminal and emergency evacuation space, a water-oriented use, which will serve the local and regional needs of the Bay Area. Therefore, the Commission finds the fill is consistent with the public trust.
- K. **Title.** The Port has primary land jurisdiction over all development of property around the Ferry Terminal area under the Burton Act. WETA is permitted to operate ferry services under License Agreement #14955 between WETA and the Port.
- L. **Coastal Zone Management Act.** The Commission further finds, declares, and certifies that the activity or activities authorized herein are consistent with the Commission's Amended Management Program for San Francisco Bay, as approved by the Department of Commerce under the Federal Coastal Zone Management Act of 1972, as amended.
- M. **Environmental Review.** WETA, acting as the lead agency, certified the Final EIR/EIS on October 2, 2014, pursuant to the California Environmental Quality Act (CEQA), Section CCR 15061[b][3]. The Federal Transportation Administration, acting as the lead agency, issued a Record of Decision on September 5, 2014, pursuant to the National Environmental Policy Act, Section 23 USC 327.
- N. **Enforcement Program and Civil Penalties.** The Commission has an enforcement program that reviews its permits for compliance. The Commission may issue cease and desist and civil penalty orders if violations are discovered. The McAteer-Petris Act provides for the imposition of administrative civil penalties ranging from \$10 to \$2,000 per day up to a maximum of \$30,000 per violation. The Act also provides for the imposition of court-imposed civil penalties of up to \$30,000 in addition to any other penalties, penalties for negligent violations of between \$50 and \$5,000 per day, knowing and intentional penalties of between \$100 and \$10,000 per day, and exemplary penalties, which are supplemental penalties, in an amount necessary to deter future violations. In addition, anyone who places fill, extracts materials, or makes any substantial change in use of any water, land or structure within the area of the Commission's jurisdiction without securing a permit from the Commission is guilty of a misdemeanor.
- O. **Conclusion.** For all of the above reasons, the benefits of the project exceed the detriment of the loss of water areas, the impacts to water quality and the impacts to fish and wildlife. Further, as conditioned, the project provides maximum feasible public access to the Bay and its shoreline consistent with the project. Therefore, the project is consistent with the *Bay Plan*, the SAP, the McAteer-Petris Act, CEQA, and the Commission's amended management program for the San Francisco Bay segment of the California coastal zone.

IV. Standard Conditions

- A. **Permit Execution.** This permit shall not take effect unless the permittee(s) execute the original of this permit and return it to the Commission within ten days after the date of the issuance of the permit. No work shall be done until the acknowledgment is duly executed and returned to the Commission.

- B. **Certification of Contractor Review.** Prior to commencing any grading, demolition, or construction, the general contractor or contractors in charge of that portion of the work shall submit written certification that s/he has reviewed and understands the requirements of the permit and the final BCDC-approved plans.
- C. **Recording.** The permittees shall record this permit with San Francisco County within 30 days after execution of the permit and, within 30 days after recordation, provide the original recordation to the Commission.
- D. **Notice of Completion.** The attached Notice of Completion and Declaration of Compliance form shall be returned to the Commission within 30 days following completion of the work.
- E. **Permit Assignment.** The rights, duties, and obligations contained in this permit are assignable. When the permittee(s) transfer any interest in any property either on which the activity is authorized to occur or which is necessary to achieve full compliance of one or more conditions to this permit, the permittee(s)/transferors and the transferees shall execute and submit to the Commission a permit assignment form acceptable to the Executive Director. An assignment shall not be effective until the assignees execute and the Executive Director receives an acknowledgment that the assignees have read and understand the permit and agree to be bound by the terms and conditions of the permit, and the assignees are accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the permit.
- F. **Permit Runs With the Land.** Unless otherwise provided in this permit, the terms and conditions of this permit shall bind all future owners and future possessors of any legal interest in the land and shall run with the land.
- G. **Other Government Approvals.** All required permissions from governmental bodies must be obtained before the commencement of work; these bodies include, but are not limited to, the U. S. Army Corps of Engineers, the State Lands Commission, the Regional Water Quality Control Board, and the city or county in which the work is to be performed, whenever any of these may be required. This permit does not relieve the permittee(s) of any obligations imposed by State or Federal law, either statutory or otherwise.
- H. **Built Project must be Consistent with Application.** Work must be performed in the precise manner and at the precise locations indicated in your application, as such may have been modified by the terms of the permit and any plans approved in writing by or on behalf of the Commission.
- I. **Creosote Treated Wood.** No pilings or other wood structures that have been pressure treated with creosote shall be used in any area subject to tidal action in the Bay or any certain waterway, in any salt pond, or in any managed wetland within the Commission's jurisdiction as part of the project authorized herein.

- J. **Life of Authorization.** Unless otherwise provided in this permit, all the terms and conditions of this permit shall remain effective for so long as the permit remains in effect or for so long as any use or construction authorized by this permit exists, whichever is longer.
- K. **Commission Jurisdiction.** Any area subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission under either the McAteer-Petris Act or the Suisun Marsh Preservation Act at the time the permit is granted or thereafter shall remain subject to that jurisdiction notwithstanding the placement of any fill or the implementation of any substantial change in use authorized by this permit. Any area not subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission that becomes, as a result of any work or project authorized in this permit, subject to tidal action shall become subject to the Commission's "bay" jurisdiction.
- L. **Changes to the Commission's Jurisdiction as a Result of Natural Processes.** This permit reflects the location of the shoreline of San Francisco Bay when the permit was issued. Over time, erosion, avulsion, accretion, subsidence, relative sea level change, and other factors may change the location of the shoreline, which may, in turn, change the extent of the Commission's regulatory jurisdiction. Therefore, the issuance of this permit does not guarantee that the Commission's jurisdiction will not change in the future.
- M. **Violation of Permit May Lead to Permit Revocation.** Except as otherwise noted, violation of any of the terms of this permit shall be grounds for revocation. The Commission may revoke any permit for such violation after a public hearing held on reasonable notice to the permittee(s) or their assignees if the permit has been effectively assigned. If the permit is revoked, the Commission may determine, if it deems appropriate, that all or part of any fill or structure placed pursuant to this permit shall be removed by the permittee(s) or their assignees if the permit has been assigned.
- N. **Should Permit Conditions Be Found to be Illegal or Unenforceable.** Unless the Commission directs otherwise, this permit shall become null and void if any term, standard condition, or special condition of this permit shall be found illegal or unenforceable through the application of statute, administrative ruling, or court determination. If this permit becomes null and void, any fill or structures placed in reliance on this permit shall be subject to removal by the permittee(s) or their assignees if the permit has been assigned to the extent that the Commission determines that such removal is appropriate. Any uses authorized shall be terminated to the extent that the Commission determines that such uses should be terminated.
- O. **Permission to Conduct Site Visit.** The permittee(s) shall grant permission to any member of the Commission's staff to conduct a site visit at the subject property during and after construction to verify that the project is being and has been constructed in compliance with the authorization and conditions contained herein. Site visits may occur during business hours without prior notice and after business hours with 24-hour notice.